

# Public Policies

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## Lakin: Missouri's largest insurers paid \$400 million-plus to 2003 tornado victims

*Total losses certain to top \$500 million*

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### Public Policies

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*Public Policies* serves as a key communications link between MDI and Missouri's legislators, weekly and broadcast media, industry observers and trade associations.

**Comments or questions,  
call 573-526-2946.**

Missouri's 30 largest auto and homeowner insurers in last May's severe-storm areas paid out more than \$400 million for damages, and the state's overall losses will certainly top \$500 million, Department of Insurance (MDI) Director Scott Lakin said.

Lakin said the devastation from tornados May 4 to 11 last year, spawned by a stalled "super cell," clearly emerged as Missouri's second-most costly insured disaster ever, ranking behind only the April 2001 hailstorm in St. Louis County that could reach \$1 billion in insured losses. The serious flooding of the 1990s largely did not involve private insurance.

The high-volume insurers have written checks for \$401.1 million so far and reported almost \$3 million in pending claims from the May 2003 tornados and related storms.

Overall, the 30 largest insurers reported 75,385 damage claims that week from all 115 Missouri counties, including St. Louis City. Of those, at least 29,753 affected autos and the remainder – 44,190 – involved structures. Damage to homes and businesses totaled at least \$328.5 million.

The May 2003 damage raked Missouri from border to border, north, south, east and west. Lakin said insurance company reports so far indicate that his home area of Clay County suffered the most severe losses, with at least 3,945 building and 2,424 auto claims that yielded payouts of \$56.4 million.

*(See Tornado victims, p. 2)*

### 2003 malpractice claims reach record lows

Missouri medical malpractice claims filed and paid fell to all-time lows in 2003 while insurers enjoyed a cash-flow windfall, Department of Insurance Director Scott Lakin reported.

"If Missouri's malpractice insurers suffered a crisis, it was a one-year phenomenon that began and ended in 2002," Lakin said. "The Missouri malpractice insurance environment is sound. The insurers' problems clearly have passed, but policyholders, especially physicians, are left with high rates – perhaps much too high – and too few options for coverage.

"Our major problem is convincing companies to enter and compete in the Missouri market after so many insurers folded or withdrew nationally.

*(See 2003 malpractice claims, p. 3)*

## Tornado victims

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Jefferson County, south of St. Louis, registered payments of \$38.4 million after a tornado seriously damaged DeSoto.

And the Ozarks had a large concentration of damage in multiple counties with payments reaching \$29.5 million in Camden County (Camdenton), \$20.3 million in Cedar County (Stockton), \$14 million in Greene County (Battlefield), \$9.6 million in Lawrence County (Pierce City) and \$19 million in Jasper County (Carl Junction).

Other large payments included \$13.3 million in Cape Girardeau County (Jackson); \$19.9 million in Franklin County; \$9.1 million in St. Louis County; and \$5 million in Lewis County (Canton).

Lakin said the totals on losses should climb above a half-billion dollars because the MDI survey did not include:

- Claims paid by more than 100 smaller auto and homeowners insurers in the state. Also not included are any claims with 125 so-called farm or county mutuals, which account for considerable market shares in many hard-hit rural counties, particularly in the Ozarks.

- Deductibles paid out of pocket by policyholders. For example, assuming a common \$500 deductible, auto and home owners would pay out almost \$40 million besides their insurance settlements to restore damages.

- Losses suffered by uninsured property owners, including damages to public buildings and infrastructure such as roads.

### Lakin cites efforts by MDI, insurers; complaints lower than expected

Lakin said both the department and most insurance companies provided consumer services at un-

precedented levels for policyholders who suffered damage. "The department's veterans say the emergency response, both internally and from the companies, has improved by leaps and bounds over the past decade," Lakin said.

Most of the larger insurance writers had agents, claims adjusters and other personnel on the ground in tornado sites by the day after the disasters, often using mobile units. In at least one instance, so many personnel arrived in Battlefield – a Springfield suburb – that emergency management staff had to evacuate them to allow clearing of debris.

MDI, for the first time, provided on-site counseling for storm victims, using temporary quarters in Gladstone, Canton, DeSoto, Jackson, Camdenton and Stockton. It also teamed with high-volume insurers for media and public-education events in several sites.

**That visibility produced 213 consumer complaints to MDI that have been resolved – 105 in favor of the policyholder, or half the cases. Those 105 cases produced an extra \$1.5 million in recoveries for consumers, or about \$15,000 for every complaint that was upheld. MDI is still receiving a trickle of complaints, usually disagreements on final settlements of damage.**

Lakin said the rapid response to the disaster actually helped generate many complaints. Policyholders often contacted MDI for assistance because, while they had been promised quick action on adjusting losses and payments on the scene shortly after the storms, they occasionally had difficulty getting further information from some companies for weeks afterward.

Other common complaints involved the insurers' initial insistence on repairing a home that local authorities had condemned and ordered owners to remove; virtually all those cases eventually ended with settlements for total losses.

Lakin said the May tornados

produced about half the number of complaints expected based on damages, compared to the St. Louis hailstorm. He attributed part of that decline to:

- The severe nature of the damage, unlike hailstorms that may produce disagreements on whether the storm or wear-and-tear produced damage.

- Guidelines MDI issued in June 2001 that made clear the state's expectations on how repairs must proceed on damages to siding and roofing.

- General improvements in the industry's disaster response plans.

MDI for the first time produced a "tornado complaint index" that provides a rough gauge of consumer satisfaction with companies, based on the number of complaints considering each company's volume of Missouri homeowners business.

### Nonrenewals for claims still a problem

Although insurers appear to have limited their nonrenewal of policyholders who filed claims, Lakin warned claimants that they may face repercussions for several years. In the past three years, insurers across the country have increased nonrenewals of homeowners policyholders who filed weather-related claims, and Missouri figures indicate the practice tripled here.

MDI conducted a survey of the top 30 companies after the media posed specific questions about whether insurers were nonrenewing, charging higher rates or taking other actions against policyholders as a result of tornado claims.

But only a handful of companies completed the seven-item questionnaire. Most either did not respond at all, refused for reasons such as "trade secrets" or submitted full answers that nevertheless invoked confidentiality provisions

(See *Tornado victims*, p. 3)

## 2003 malpractice claims

(continued from p. 1)

Policyholders desperately need price competition again, but insurers across the U.S. have been unwilling to devote more capital to this line of business so far."

Based on company and self-insured filings:

- **New claims filed against health-care providers and physicians – an important indicator of future malpractice settlements – plunged to all-time lows (under laws passed in 1986).** Claims filed against physicians last year fell 13.8 percent to 664, compared to a previous low of 704 in 2001. Claims against all providers fell 16.4 percent to 1,369 last year, compared to the previous mark of 1,554 in 2001.

- **Claims closed with payments set a record low overall in 2003 and almost did so for physicians.** Medical malpractice settlements or, in rare cases, jury verdicts were awarded in 448 cases, or 21.3 percent below the previous year and four fewer than the all-time low in 2000. For physicians, claims paid fell 25.8 percent from 229 to 170, almost matching the record low of 158 in 1998.

- **The percentage of premiums paid out to victims fell to the lowest levels seen since the late 1980s, when the last medical malpractice "crisis" was resolving itself.** Lakin said such low payouts commonly occur when the "insurance cycle" – a recurring boom-and-bust pattern – is moving into a highly profitable phase; rates continue to rise even after they are sufficient to cover liabilities and normal profits. Licensed medical malpractice insurers for physicians paid out only 38 cents of every dollar in premium collected, compared to 63 cents in 2002 and a 10-year average of 62 cents. For the top five insurers that write the bulk of physician policies in Missouri, the results were even brighter: only 24 cents paid on the dollar. For all health-care providers, malpractice insurers spent 45 cents.

- **The same pattern of low payment ratios extended to the unregulated "surplus lines" malpractice market.** Those insurers only paid out 29 cents on the dollar.

- **Actual dollars paid in benefits to malpractice victims fell dramatically – by \$26 million (24 percent) for the licensed market overall, \$27.7 million (35 percent) for licensed physician business and \$18 million (70 percent) for unregulated surplus lines carriers.**

- **Average payments per claim fell slightly overall to \$207,068.** Average payments in cases involving physicians rose 9.1 percent, almost all to cover increased economic damages for lost wages and future medical care of victims. The median – or more typical – total settlement in Missouri was \$111,250.

- **Missouri data again showed no evidence to support the national rhetoric about "skyrocketing judgments" and "out-of-control juries."** The number of payments that reached Missouri's then-maximum of

\$557,000 on non-economic or "pain and suffering" damages fell from 13 in 2002 to six last year, or the average number in recent years. The number of payments that exceeded \$1 million – mostly economic damages for lost wages and medical costs – fell from 16 to 13; only three cases of 448 exceeded \$2 million.

- **Despite the focus on non-economic damages, they dropped to an all-time low as a percentage of total payments in Missouri.** In 2003, non-economic damages accounted for only 41.1 percent of awards, compared to a previous low of 45.2 percent in 1992.

- **The legislative proposals to further reduce Missouri's cap on non-economic damages would have produced few savings – or premium reductions – in 2003.** Proposals pending would have reduced premiums by 2 percent or less.

- **The severity of injuries in closed claims subsided slightly in 2003 after a surge the previous year.** In particular, the number of deaths involved dropped from 205 to 135, or about the norm. Overall, deaths and permanent disabilities accounted for 65 percent of all claims paid, or the usual ratio. On a scale of 1 (temporary emotional damage) to 9 (death), the average claim closed in 2003 dropped from 6.1 to 5.9, although both scores indicate permanent, significant injury. The

(See 2003 malpractice claims, p. 4)

## Tornado victims

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in current MDI regulations. "As a result, policyholders really have no way of knowing their status if they have to file a claim in the future or did so after the tornado," Lakin said.

He said the surveys and consumer complaint investigations indicated some insurers nonrenewed policyholders who filed May 2003 claims, but many companies appear to have exempted tornado claims for nonrenewal now.

"Some insurers suggested that while they did not nonrenew for the tornado, they still will count the claim in the future. As a result, these policyholders face a greater chance of nonrenewal or surcharges if they file a future claim," Lakin said.

"Companies reported these losses to the national computer database that tracks insurance claims, and consumers will find that they have a black mark against them if they apply for coverage with a different company in the next few years. In many cases, these claims also could damage the insurability of the property if it is sold to a new owner."

Legislation that would bar insurers from nonrenewing or surcharging policyholders who file a claim for weather-related damage died in the Senate.



## 2003 malpractice claims

(continued from p. 3)

severity of claims filed in 2003, however, rose slightly, almost tying the all-time record set in 2001.

- **While losses paid, claims paid and claims filed dropped sharply in 2003, medical malpractice insurers increased spending by 43.6 percent for legal expenses to fight those cases.** Medical Assurance Co. – now the largest insurer of physicians in Missouri – spends more than 60 percent of its earned premium dollars on legal costs, or more than twice what it paid to victims last year. On average, medical malpractice insurers spent more than one-third of their premiums to contest patients' claims.

### Licensed market not responding to prevailing conditions

The top three insurers for physicians – Medical Assurance Co., Medical Protective Co. and Intermed – all posted profits last year, totaling \$60 million, compared to after-tax losses of \$21.2 million in 2002.

Lakin said encouraging trends in the data have not yet affected pricing of the state's medical malpractice insurers for physicians. The top three insurers raised their rates 19, 26 and 82 percent last year. (MDI does not approve rates under state law.) He said MDI had determined competition no longer helps keep check on Missouri malpractice rates – in sharp contrast to the late 1990s when some companies simply copied and filed leading competitors' rates as their own. Malpractice insurers in Missouri largely have eliminated competitors' prices as a factor in rate-setting, based on company rate filings.

Since mid-2001, eight national companies that had at least 70 percent of the Missouri malpractice market have withdrawn from the business or become insolvent; none of those decisions resulted from Missouri conditions. That competitive void, however, left Missouri health-care providers searching for coverage when other insurers are not expanding this line of business. Although nine new physicians' insurers have entered the Missouri market in the past year, only one – Missouri Physicians Mutual, which wrote almost \$19 million in coverage – did appreciable business last year.

Lakin noted that in 2003 malpractice companies in Missouri did not drop reserving for future losses even though the number of filed claims declined sharply and the severity of injuries fell slightly. Licensed insurers only reduced their estimates of losses on 2003

claims by 2.6 percent from the year before.

Physicians' insurers indicated they expect eventually to pay out 90 percent of the premium for claims filed last year (incurred loss ratio), down from 117 percent in 2002. Of the top five insurers for physicians, three posted incurred loss ratios below 60 percent on their Missouri business, which would be highly profitable for most property and casualty lines. The five had a combined loss ratio of 72 percent.

However, almost one-fifth of all physicians' incurred losses were reported by Chicago Insurance Co., which entered the Missouri market in 1999 and then began withdrawing in early 2002. The company, which competitors have cited for substantially underpricing its policies, wrote only \$3.8 million of coverage here in 2003, but reported \$13.4 million in actual payouts and \$19.8 million in anticipated settlements, much of which represented higher payments and revised estimates for claims filed in earlier years.

The surplus lines market also had upbeat financial filings, based on projected losses for 2003 business. These insurers reported they eventually expect to pay only 69 cents on the premium dollar for 2003 claims.



# MDI report: limiting malpractice data to insurers yields same result – 17-year lows on claims filed, paid

*New analysis omits self-insured providers*

Department of Insurance Director Scott B. Lakin reported that limiting the agency's analysis of medical malpractice data to insurance companies produces no change in its 2003 results – record lows in claim activity and little change in average payments.

If the analysis excludes contested data from self-insured health-care providers, Lakin said the 2003 findings indicate:

- **Claims newly filed – a key indicator of future malpractice insurance costs – fell 16.1 percent, from 1,506 in 2002 to an all-time low of 1,263 against all health-care professionals and facilities.** That 2003 figure compared to a previous low of 1,300 in 1990. The record high of 1,939 came in 1986.

- **Claims filed against physicians dropped 13.9 percent, from 726 to a record low of 625 in 2003.** The previous record of 642 occurred in 2001 while the record high of 932 was posted in 1986.

- **Claims paid on all policies declined from 522 in 2002 to 392 last year, or by 25 percent, matching the historic low of 392 in 2000.** The high of 659 paid claims against all health-care providers came in 1986, when most of Missouri's current medical malpractice insurance and tort laws were enacted.

- **Claims paid on physician policies fell from 226 to 161 in 2003, or by 28.8 percent.** The 2003 figure was the second lowest on record, surpassed only by the 149 claims paid in 1998. The high of 348 – or more than double last year's levels – occurred in 1986.

- **The average claim paid against all medical care providers fell from a record \$212,407 in 2002 to \$206,068, or by 3.1 percent.**

- **The average claim against**

**physicians that insurers paid increased from \$229,321 in 2002 to \$249,773 – almost solely because of increasing economic damages to victims, which no party has suggested limiting.** In most years since 1995, average insured awards against physicians have exceeded \$220,000.

- **Larger awards by insurers declined substantially last year.** The number of payments reaching Missouri's 2003 non-economic damage cap of \$557,000 was five, compared to 13 the year before. Awards exceeding \$1 million were 11, compared to 15 the previous year. Two awards in 2003 exceeded \$2 million, or the same number as in 2002.

- **Because a handful of larger awards skew the figures, the average awards were considerably higher than the typical-or median-payments.** The median 2003 total award by insurers was \$125,000, with separate medians of \$36,200 for economic damages and \$26,800 for non-economic damages.

Missouri law requires all insurers writing policies and self-insured health providers and facilities to report claims data to MDI for analysis so that policymakers have a better picture of overall medical malpractice results. Requirements for insurers extend back to 1978. Few states have that requirement.

For the past 17 years, MDI has released such claims information combining self-insured and insured results. (Only insurers file financial operating results reported by MDI.) This analysis factors out claim data reported by self-insured entities, which can range from hospitals to large medical practices. This new analysis omitted 163 self-insured claims filed in 2003, out of a total of 1,369, and 168 claims closed of 1,424.

Lakin released the insurers-only data after legislative leaders and physicians attacked the integrity of MDI's 2003 report, which was accelerated again this year to provide information to policymakers on the malpractice market. The criticism centered on information provided by self-insured providers – typically hospitals and other larger institutions.

"We were surprised when large facilities appeared to volunteer their ongoing violations of the law as part of a political maneuver to discredit Missouri's malpractice database, which is the most extensive and accurate of any state in the country," Lakin said. "We have tried to convince many of these institutions to obey the law for years, with no success, and the legislature has refused to give us any tools to increase compliance."

In 2003 and 2004, MDI unsuccessfully sought the ability to fine self-insured facilities that fail to report as part of an effort to increase compliance. This month, House conference committee members removed the proposed authority to fine self-insureds from HB 1304, which Gov. Bob Holden vetoed.

"Nevertheless, we have been confident about the trends we have been reporting to the legislature and the public," Lakin said. "The institutions that have been violating the law have failed to report for years, so their figures have no effect on trends."

"Furthermore, insurance companies do not set their rates based on self-insured results, which are unknown except through our reports, so these facilities have no impact on the insurance rate-setting environment."

(See *malpractice*, p. 6)

## malpractice

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Lakin said insurers actually have access to little data – other than their own – on the Missouri insurance market to use in setting rates for different types of physicians. Insurers that participate in the Insurance Services Office database have access to a pool on about half the Missouri results; most malpractice insurers operating in Missouri do not use ISO data in setting rates.

In setting up a special state-sponsored insurance program for hard-to-insure doctors this year, MDI is assembling the most comprehensive database yet on malpractice results by physician specialty, such as obstetrics, in Missouri. MDI will make available that database, which will show trends over 10 years, to all malpractice insurers in the state.

MDI has asked for legislative authority to reject malpractice rates that do not rely heavily enough on Missouri-only data in the future.

Lakin also said that contrary to some allegations, the data does include malpractice policies written on corporations that employ physicians and other provider practices. Claims against doctors employed by these corporations are shown under “physicians and surgeons” in that part of MDI’s

Detailed tables on Missouri medical malpractice experience are available at the [MDI Web site](#).



## Jeff Blume – MDI Employee of the Quarter



*Jeff Blume*  
*MDI Employee of the Quarter*

It may be hard to keep up with this Employee of the Quarter during the summer months. Blume may be on the water – fishing, skiing or boating.

Although Blume thrives in the outdoors, he also enjoys working at MDI as a financial analysis specialist. Blume has been with the department for nine years in this position. His job entails monitoring the solvency and statutory compliance of a number of property and casualty companies domiciled in Missouri. Blume also handles all capital and special deposits jointly held with do-

mestic and foreign insurers licensed in Missouri.

“Everyday my work presents a new situation - no day is the same. There is always room to learn something new about the companies that I monitor and the insurance industry in general,” Blume said.

Blume worked at Central Bank for 10 years prior to coming to MDI.

“I feel my position has helped me further understand the insurance and financial industry as a whole,” Blume said. “My goal is to learn something new everyday and to never be faced with an unexpected insolvency condition at one of the companies I monitor.”



# MDI Regulatory Actions

## April 2004

### Legal action - agents, agencies, brokers, companies

*American Western Life Insurance Co.*, Salt Lake City, UT, certificate of authority revoked.

*Amerisure Insurance Co.*, Farmington, MI, \$1,000 forfeiture for filing inaccurate statistical data.

*Caterpillar, Inc.*, Peoria, IL, acquired *Maxicare Life and Health Insurance Co.*

*Central United Life Insurance Co.*, Houston, TX, \$1,000 forfeiture for filing inaccurate statistical data.

*Civic Property and Casualty Insurance Co.*, Los Angeles, CA, \$1,000 forfeiture for filing inaccurate statistical data.

*Clarendon National Insurance Co.*, New York, NY, \$1,000 forfeiture for filing inaccurate statistical data.

*Commercial Compensation Casualty Co.*, San Francisco, CA, certificate of authority revoked.

*Depositors Insurance Co.*, Des Moines, IA, \$1,000 forfeiture for filing inaccurate statistical data.

*Federal Life Insurance Co., (Mutual)*, Riverwoods, IL, \$1,000 forfeiture for filing inaccurate statistical data.

*Jefferson Pilot Financial Insurance Co.*, Greensboro, NC, \$1,000 forfeiture for filing inaccurate statistical data.

*Lincoln Heritage Life Insurance Co.*, Phoenix, AZ, \$1,000 forfeiture for filing inaccurate statistical data.

*Northland Insurance Co.*, Mendota Heights, MN, \$1,000 forfeiture for filing inaccurate statistical data.

*Reciprocal of America*, Richmond, VA, certificate of authority revoked.

*Sable Insurance Co.*, San Francisco, CA, certificate of authority revoked.

*Shelby Casualty Insurance Co.*, Birmingham, AL, \$1,000 forfeiture for filing inaccurate statistical data.

### Financial Exams

*Business Mens Assurance*, Kansas City, MO.

### Company Changes

*Associated Physicians Insurance Co.*, Chicago, IL, certificate of authority was revoked.

*BJC Dental Benefits*, St. Louis, MO, changed its name to *Essex Dental Benefits, Inc.*

*BNM Indemnity*, Morristown, NJ, changed its name to *Crum & Forster Indemnity Co.*

*Clarica Life Insurance Co.*, Chicago, IL, merged with *Midland National Life Insurance Co.*

*Commercial Compensation Casualty Co.*, San Francisco, CA, certificate of authority was revoked.

*Conseco Annuity Assurance Co.*, Carmel, IN, changed its name to *Conseco Insurance Co.*

*Eagle Pacific Insurance Co.*, Long Grove, IL, merged into *American Protection Insurance Co.*

*Encompass Indemnity Co.*, Northbrook, IL, redomesticated from Florida to Alabama.

*First American Title Insurance of Texas*, Houston, TX, was as admitted as a title company.

*GE Casualty Insurance Co.*, Fort Washington, PA, changed its name to *AIG Premier Insurance Co.*

*GE Property & Casualty Insurance Co.*, Fort Washington, PA, changed its name to *AIG Centennial Insurance Co.*

*Gerling Credit Insurance Co.*, Baltimore, MD, changed its name to *Atradius Trade Credit Insurance Inc.*

*Health Care Indemnity Inc.*, Nashville, TN, was admitted with liability authority.

*Instant Auto Insurance Co.*, a Missouri Company merged with *Insura Property and Casualty Insurance Co.* which is not licensed in Missouri.

*Lawrenceville Property and Casualty*, merged with *MIIX Insurance Co.*

*Liberty Bankers Life Insurance Co.*, Dallas, TX, redomesticated from Iowa to Oklahoma.

(See *Regulatory Actions*, p. 8)

## Regulatory Actions

(continued from p. 7)

**Management Services USA Inc.**, Danville, IL, withdrew as a third party administrator (TPA).

**Mid-State Surety Corp.**, Grosse Pointe Farm, MI, was merged into **The Guarantee Co. of North America USA**.

**MJR Fire Insurance Co.**, Morristown, NJ, changed its name to **United States Fire Insurance Co.**

**National Land Title Insurance Co.**, Barrington, IL, was admitted as a title company.

**NY LIFE Insurance Co. of Arizona**, New York, NY, added variable contracts.

**Owners Insurance Co.**, Lansing, MI, added accident and health authority.

**Pathmark Administrators, Inc.**, Lincoln, NE, was admitted as a TPA.

**Reciprocal of America**, Glen Allen, VA, certificate of authority was revoked.

**Renaissance Benefit Administrators**, Okemos, MI, was admitted as a TPA.

**Sable Insurance Co.**, San Francisco, CA, certificate of authority was suspended.

**Seaton Insurance Co.**, Cambridge, MA, redomesticated from Washington to Rhode Island.

**Stonewall Insurance Co.**, Cambridge, MA, redomesticated from Ohio to Rhode Island.

**Sun Life Assurance Co. of Canada (US)**, Wellesley Hills, MA, added accident and health authority.

**TIG Insurance Co. of America**, Manchester, NH, merged with **TIG Insurance Co.**

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## Market Conduct

**TICO Insurance Company and Leader Insurance Co.**

Irving, TX

Voluntary Forfeiture of \$23,712.00

**Metropolitan Property and Casualty**

Warwick, RI

Voluntary Forfeiture of \$28,901.00



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